

CLIENT ALERT

ASBCA Holds that Transmission Emails are "Part of the Same Transaction" as Mods for Plain Meaning Purposes

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Can contractors reserve rights in a transmission email while executing a contract modification that is silent on such reservation? The ASBCA recently affirmed again that yes, contractors can. In *NMS Management, Inc.*, ASBCA No. 61519 (Apr. 11, 2019), a dispute over the “improper attempt at a partial exercise” of an option period, the ASBCA rejected the Government’s argument that NMS was strictly bound by the terms of a signed bilateral modification – viewed in isolation – because NMS’s accompanying transmission email stated that it was signing under protest. The ASBCA clarified the plain meaning rule by citing precedent that the “interpretation of a contract as a whole requires consideration of all documents that are part of the same transaction together.” The Board held that “the [transmission] email dispels any notion that Modification No. P00011 is the only writing to consider when evaluating the legal consequences of the modification.”

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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